



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 382 OF 2015

**JANET CHEPNGETICH KOSGEI.....
.....PLAINTIFF**

VERSUS

**RUTH CHELIMO KIOS.....
DEFENDANT**

JUDGMENT

Janet Chepnetich Kosgei (hereinafter referred to as plaintiff) has filed the suit herein against **Ruth Chelimo Kios (hereinafter referred to as the defendant)** claiming that at all the material times to this suit, the defendant was and is still the registered owner and proprietor of all that parcel of land known as **Kapsaret/Kapsaret Block 5 (Kapteldon)/11**, measuring approximately 2.18 Ha or thereabouts which had been charged to National Bank of Kenya Ltd. That on or about 22nd day of May, 2014, the plaintiff entered into a sale agreement with the defendant whereupon the defendant was to sell part of the land parcel number Kapsaret/Kapsaet Block 5 (Kapteldon)/11 measuring 1.5 acres at agreed mutual consideration of Kshs.560,000/= through the offices of M/s Chepkitway & Company Advocates to secure and or redeem the same after the property being advertised for sale.

The sale agreement was addressed formally after having made the earlier agreement at home on 29th May, 2013 which was witnessed by both family members and that part of the agreed amount was to be used in offsetting outstanding loan with the National Bank of Kenya Limited. He states that as per the said contract and/or agreement, the defendant had to undertake the execution or cause to be executed all the necessary requirements immediately after the redemption and discharge of the title from the bank. The plaintiff avers that when the defendant was in the process of fulfilling her obligation, he excised out land entitled to the plaintiff and that the services of a surveyor were obtained and the plaintiff’s parcel of land was beaconsed.

However, after a long wait to have the transaction sealed, it has just emerged that the defendant has remained adamant to have the plaintiff gain vacant possession of the agreed part of parcel of land known as Kapsaret/Kapsaret Block 5 (Kapteldon)/11 therefore breach of the contract. The plaintiff further avers that the defendant approached her on the 21st day of May, 2015 to have additional of two (2) points at Kshs.110,000/= to enable her accomplish survey work which sum of Kshs.80,000 paid at the signing of the agreement. The sum of Kshs.20,000/= was paid to surveyor hence at Kshs.10,000 at the time of receipt of title deed.

The plaintiff ultimately prays for: -

- (a) A refund at current market value of the property and in the alternative specific performance**

on the part of the defendant or in the alternative the Executive Officer to execute relevant documents in favour of the plaintiff.

(b) Orders for interim injunction strictly restraining the defendant, her agents, servants and/or employees from dealing and/or disposing off that part comprising of 1.7 acres out of parcel number Kapsaret/Kapsaret Block 5 (Kapteldon)/11.

(c) General damages for breach of contract.

(d) A declaration that the plaintiff being willing buyer to have her portion of 1.7 acres excised from parcel number Kapsaret/Kapsaret Block 5 (Kapteldon)/11.

(e) Costs of this suit.

When the matter came up for hearing, the plaintiff testified that she is the purchaser of that part of parcel of land known as Kapsaret/Kapsaret Block 5 (Kapteldon)/11 and that she entered into a mutual agreement with the Vendor herein known as Ruth Chelimo Kios, the defendant in this matter whereby laid down an agreement on the 29th day of May, 2013 at home thereafter formalized the same on the 22nd day of May, 2014. The defendant has remained adamant in not sealing up the transaction though having been duly paid as well as rescued to offset the outstanding loan at the National Bank of Kenya Limited. That she has made all the necessary procedures by laying down a demand to the effect with the intent to constitute civil process but to no avail on the part of the defendant herein. She has been compelled to institute these proceedings in order for the defendant to observe the sale obligation by either transferring that part of place of land known as Kapsaret/Kapsaret Block 5(Kapteldon)/11. That what she has stated herein relates to the prevailing issues surrounding the aborted sale transaction whereby she has remained in anguish without enjoying the fruits of her purchase.

I have considered the pleadings and evidence on record. The defendant was served but failed to enter appearance and defence and therefore, the plaintiff's evidence was not challenged. The plaintiff gave testimony and produced documents whose report was that on 22.5.2014, the plaintiff entered into agreement with the defendant for the purchase of 1.5 acres of Kapsaret/Kapsaret/Block 5 (Kapteldon)/11 measuring approximately 2.18 Ha when land was charged at Nation Bank of Kenya Limited. The purchase price was Kshs.560,000/=. Kshs.510,000/= was paid by the plaintiff and the balance of Kshs.50,000 was to be paid immediately the Land Control Board gave consent to transfer in favour of the purchaser. On 21st day of May, 2015, the defendant agreed to sell the plaintiff an additional 0.2 acres making the total acreage 1.7. the total consideration for the 0.2 acres was Kshs.60,000/= hence making the balance Ksh.110,000. It was agreed that the total balance of Kshs.110,000/= was to be paid as follows:

(a) Kshs.80,000/= upon signing the agreement which the defendant acknowledged receipt.

(b) Kshs.20,000/= paid the surveyor upon signing the agreement.

(c) Kshs.10,000/= being balance was to be paid upon the title document being processed in favour of the plaintiff.

From the foregoing, a total of Kshs.100,000/= was paid after the supplementary agreement. The grand total payment was Kshs.610,000/=.

The import of this section of Sections 6 to 9 of the Land Control Act Cap 302 Laws of Kenya is that all transactions involving agricultural land situate in a land control area are void for all purposes unless the land control board within that land control area has sanctioned them. Even declaration of a trust in agricultural land situated in a land control area is not spared; without consent of the land control board, it is also void. Consent of the relevant Land Control Board must be obtained within six months of the making of the agreement relating to agricultural land. The High Court however has power, for good reason, to extend the period for applying

for consent. Where the transaction is ultimately void for lack of consent, any money or consideration paid by a would-be purchaser is recoverable as a debt. It is a criminal offence punishable by imprisonment or fine or both to pay or receive payment in respect of a void transaction or to take possession or remain in possession of land, which is the subject of such void transaction.

I do find that the consent of the Land Control Board was not obtained as required by law hence the whole transaction was null and void and the consideration paid by the plaintiff is hereby treated as a debt to be refunded by the plaintiff as such. The Land Control Act does not provide that the plaintiff is entitled to the value of the property and therefore I do grant the plaintiff judgment in terms that he be refunded Kshs.610,000/= being the money paid as consideration plus a 10% interest per annum from the 22.5.2014 to-date. Orders accordingly.

Dated and delivered at Eldoret this 22nd day of November, 2017.

A. OMBWAYO

JUDGE